

**A JOINT RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS, THE COMMISSION OF THE MILPITAS HOUSING AUTHORITY AND THE BOARD OF THE MILPITAS ECONOMIC DEVELOPMENT CORPORATION AUTHORIZING CONVEYANCE OF CERTAIN REAL PROPERTY TO THE CITY OF MILPITAS FOR PUBLIC AND ECONOMIC DEVELOPMENT PURPOSES, AND OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE CITY MANAGER TO ACCEPT THOSE CONVEYANCES AND APPROVING CERTAIN INTERFUND LOANS**

**WHEREAS**, the Milpitas Economic Development Corporation, Inc. (“MEDC”) is a California nonprofit public benefit corporation formed by the City of Milpitas (“City”) under the laws of the State of California; and

**WHEREAS**, the MEDC has the power to provide economic services to eliminate blight, provide affordable housing, improve the public realm, facilitate public and private developments, stimulate the economic development, create jobs and other appropriate purposes; and

**WHEREAS**, in the usual and regular course of its activities, MEDC has the power to enter into transactions involving transfer of properties with the City, in accordance with MEDC’s specific charitable and public purposes, for providing public and economic development services; and

**WHEREAS**, on June 17, 2014, the City of Milpitas, the Milpitas Housing Authority (MHA) and the MEDC entered into a Settlement Agreement with the County of Santa Clara, the State Controller and the State Department of Finance regarding the transfer of assets of the former Milpitas Redevelopment Agency (“Settlement Agreement”); and

**WHEREAS**, the Settlement Agreement allows MEDC to retain ownership of approximately 10.89 acres located in the Milpitas Transit Area, commonly known as the “McCandless Property” (APN Nos. 086-41-016, 086-41-017, and 086-41-018) and determines that the property owned by the MHA located at 1452-1474 South Main Street (APN Nos. 086-22-029 and 086-22-030), hereinafter “South Main Street Property,” is not subject to the housing-related provisions of the Community Redevelopment Law and the dissolution legislation; and

**WHEREAS**, as part of the Settlement Agreement, the City’s General Fund has fully paid the County Auditor-Controller for these two properties and thus the City currently retains equitable title over both properties; and

**WHEREAS**, in order to make full payments to the County Auditor-Controller as part of the Settlement Agreement, the Transit Area Impact Fee Fund needed to obtain a temporary interfund loan of Five Million Dollars (\$5,000,000) from the 2% Transit Occupancy Tax Fund to be repaid in accordance to the City’s Interfund Loan Policy; and

**WHEREAS**, Assembly Bill 1484 added Section 34167.10 to the California Health and Safety Code, which includes in the definition of a “city” to include any entity controlled by the city or for which the city is financially responsible or accountable; and

**WHEREAS**, Section 34167.10 of the California Health and Safety Code further considers several factors to determine whether an entity is controlled by a city and is therefore defined as a city, including substantial municipal control over the entity’s operations, revenues, or expenditures, municipal involvement in the creation or formation of the entity, the entity’s performance of traditional municipal functions and receipt of municipal support; and

**WHEREAS**, based on these factors set forth in Section 34167.10 of the California Health and Safety Code, the State Department of Finance and the State Controller retroactively determined that the MEDC is not an independent and separate legal entity from the City for the purpose of asset transfer between the City and MEDC; and

**WHEREAS**, the McCandless Property will be conveyed from the MEDC to the City based on the following: (i) the City’s General Fund has made full payment to the County Auditor-Controller for the McCandless Property and the City currently has equitable title of the property; (ii) in the usual and regular course of its activities, MEDC has the power under its Bylaws to transfer properties in accordance to its charitable and public purposes; and (iii) State Department of Finance and State Controller have previously determined the MEDC and City are not two separate legal entities; and

**WHEREAS**, the South Main Street Property will be conveyed from the Milpitas Housing Authority to the City based on the following: (i) the City's General Fund has made full payment to the County Auditor-Controller for the South Main Street Property and the City currently has equitable title of the property; and (ii) the Settlement Agreement provides that the property is not subject to the housing-related provisions of the Community Redevelopment Law and the dissolution legislation.

**NOW, THEREFORE**, the City Council of the City of Milpitas, Commission of the Milpitas Housing Authority, and the Board of the Milpitas Economic Development Corporation hereby find, determine, and resolve as follows:

1. The City Council, MHA Commission and MEDC Board have considered the full record before them, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to them. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The Executive Director or designee of the Milpitas Housing Authority is authorized to execute all necessary documents to convey the real properties located at 1452-1474 South Main Street (APN Nos. 086-22-029 and 086-22-030) from the Milpitas Housing Authority to the City of Milpitas.
3. The President or designee of the Milpitas Economic Development Corporation is authorized to execute all necessary documents to convey the real properties identified as APN Nos, 086-41-016, 086-41-017, and 086-41-018) from the Milpitas Economic Development Corporation to the City of Milpitas.
4. The City Manager of the City of Milpitas is hereby authorized to accept the conveyance of those two properties.
5. The City Council hereby approves the interfund loan of Five Million Dollars (\$5,000,000) from the 2% Transit Occupancy Tax Fund to the Transit Area Impact Fee Fund to be repaid in accordance to the City of Milpitas Interfund Loan Policy.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

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Mary Lavelle, City Clerk,  
MHA Secretary, MEDC Secretary

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Jose S. Esteves, Mayor,  
MHA Chair, MEDC Chair

APPROVED AS TO FORM:

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Michael J. Ogaz, City Attorney  
MHA Counsel, MEDC Corporate Counsel